

STATE OF MICHIGAN
COURT OF APPEALS

SALVATORE IACONIS and ROSANNA
IACONIS,

UNPUBLISHED
October 19, 2006

Plaintiffs-Appellants,

v

WARREN A. STEPHAN, PHYLLIS V.
STEPHAN, ANTHONY G. MAMMINA, and
MAMMINA & AJLOUNY, P.C.,

No. 269932
Oakland Circuit Court
LC No. 2005-067229-CZ

Defendants-Appellees.

Before: Murray, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's orders granting defendants' motions for summary disposition and denying plaintiffs' motion to amend their complaint. We affirm.

Following de novo review, *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004), we conclude that the trial court properly dismissed the claim of legal malpractice. In order to establish a claim of legal malpractice, a plaintiff has the burden of alleging and proving the following elements: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) the negligence proximately caused injury to plaintiff; and (4) the fact and the extent of the injury alleged. *Henry v Dow Chemical Co*, 473 Mich 63, 79 n 8; 701 NW2d 684 (2005). Generally, a claim of legal malpractice may only be raised by a client who believes that he has been damaged by retained counsel's negligence. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). However, an attorney-client relationship may be implied through conduct where there is no dispute that advice was asked for, received, and acted upon. *Macomb Co Taxpayers Ass'n v L'Anse Creuse Public Schools*, 455 Mich 1, 11; 564 NW2d 457 (1997). Review of the deposition testimony reveals that defendant attorney and law firm did not provide advice to plaintiffs. Plaintiffs had their own counsel and did not seek his input regarding the business transaction.

The trial court properly granted dismissal of the breach of contract claims against defendant sellers. The interpretation of a contract is reviewed de novo on appeal, and an unambiguous contract must be enforced according to its terms. *Hamade v Sunoco, Inc*, 271 Mich App 145, 165-166; 721 NW2d 233 (2006). The parol evidence rule provides that evidence of contract negotiations, or of prior or contemporaneous agreements, may not be admitted to vary

or contradict the terms of a written agreement that are clear and unambiguous. *Id.* at 166. Plaintiffs' contention that a latent ambiguity warrants consideration of parol evidence is without merit. The plain language of the document indicates that it is a contract for the sale of real estate, and a latent ambiguity is not apparent.

Lastly, the trial court did not abuse its discretion in denying the motion to amend the complaint. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 60; 684 NW2d 320 (2004). Amendment need not be granted where it would be futile. *Id.* Plaintiffs' request to amend the complaint to allege fraud would be futile. There can be no fraud where the means of truthfulness of the representation are available to the plaintiff, and the realization of the truth is not prohibited by the defendant. *Webb v First of Michigan Corp*, 195 Mich App 470, 474; 491 NW2d 851 (1992). Because the claim of fraud fails, the claim for vicarious liability also fails.

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood